



## **Agricultural Marketing Service**

### **7 CFR Part 922**

**[Doc. No. AMS-SC-21-0066; SC21-922-1 FR]**

#### **Washington Apricots; Suspension of Reporting and Assessment Requirements**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This final rule suspends the reporting and assessment requirements prescribed under the marketing order regulating apricots grown in designated counties in Washington (Marketing Order No. 922). In a separate meeting, the State of Washington Apricot Marketing Committee also unanimously recommended terminating Marketing Order No. 922. This rule indefinitely suspends the assessment and associated reporting requirements of the marketing order during the period that the AMS is processing the termination request.

**DATES:** Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], § 922.235 is stayed indefinitely.

**FOR FURTHER INFORMATION CONTACT:** Joshua R. Wilde, Marketing Specialist, or Gary Olson, Regional Director, Western Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326-2724 or Email: [Joshua.R.Wilde@usda.gov](mailto:Joshua.R.Wilde@usda.gov) or [GaryD.Olson@usda.gov](mailto:GaryD.Olson@usda.gov).

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491 or Email: [Richard.Lower@usda.gov](mailto:Richard.Lower@usda.gov).

**SUPPLEMENTARY INFORMATION:** This action, pursuant to 5 U.S.C. 553, proposes an amendment to regulations issued to carry out a marketing order as defined in

7 CFR 900.2(j). This final rule is issued under Marketing Order No. 922, as amended (7 CFR part 922), regulating the handling of apricots grown in designated counties in Washington. Part 922 (referred to as the “Order”) is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the “Act.” The State of Washington Apricot Marketing Committee (Committee) locally administers the Order and is comprised of producers and handlers operating within the production area.

The Department of Agriculture (USDA) is issuing this final rule in conformance with Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

In addition, this final rule has been reviewed under Executive Order 13175 – Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications. USDA has determined this final rule is unlikely to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to a marketing order may file with USDA a petition stating that the marketing order, any provision of the marketing order, or any obligation imposed in connection with the marketing order is not in accordance with law and request a modification of the marketing order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The Committee meets regularly to consider recommendations for modification, suspension, or termination of the Order's regulatory requirements. Committee meetings are open to the public and interested persons may express their views at these meetings. Agricultural Marketing Service (AMS) reviews Committee recommendations, including information provided by the Committee and from other available sources, and determines whether modification, suspension, or termination would tend to effectuate the declared policy of the Act.

On May 11, 2021, the Committee met and deliberated over the continuance of the Order. Following this meeting, the Committee unanimously recommended that AMS terminate the Order and suspend the collection of assessments. This final rule indefinitely suspends handler assessments as well as any remaining reporting requirements of the Order while AMS is processing the termination. The termination will be conducted in a separate rulemaking action.

Section 922.41 provides authority for the Committee to assess handlers for their pro rata share of the Committee expenses authorized each fiscal period. Section 922.60

authorizes the Committee to collect reports and other information necessary for the Committee to perform its duties under the Order. This final rule suspends § 922.235, which established a continuing assessment rate of \$2.86 per ton, effective for the 2019-2020 and subsequent fiscal periods. Any reports that are currently being collected are no longer required.

The Order has been in effect since 1957 and has provided the apricot industry in Washington with authority for grade, size, quality, maturity, pack, and container regulations, as well as authority for mandatory product inspection.

Handling regulations requiring apricots to be inspected and meet mandatory pack and container requirements were in effect until 2007 and minimum grade, size, maturity, and quality requirements until 2014. Following a recommendation from the Committee, AMS suspended the container regulations for apricots for one-year, effective April 6, 2006 (71 FR 16982), and subsequently extended that suspension indefinitely effective August 1, 2007 (72 FR 16265). The Committee believed that with changing market dynamics container regulations were no longer necessary to ensure orderly marketing and that suspension would provide greater flexibility to handlers for packing and shipping apricots.

In 2013, based on the Committee's recommendation, AMS issued an interim rule suspending the handling regulations for apricots effective October 24, 2013 (78 FR 62936). A final rule affirming the indefinite suspension published in the **Federal Register** March 20, 2014 (79 FR 15539). Again, the Committee believed the cost of complying with the Order's handling and inspection requirements outweighed the benefits to both producers and handlers of apricots. Both actions were unanimously recommended by the Committee.

Following these regulatory suspensions, the Committee continued to levy assessments to maintain its functionality. The Committee believed that it should continue

to fund its full operational capability, collect industry statistics on an ongoing basis, and maintain the program in the event market conditions warranted regulation.

The Committee met on May 11, 2021, to discuss market dynamics and the Committee's budget and assessments. A significant decrease in the 2020-2021 crop production and increased Committee expenses would require the Committee to increase the assessment rate by 365 percent, from \$2.86 to \$13.30 per ton, to maintain its functionality. During those discussions, the Committee determined that the suspension of handling and container requirements had not adversely affected the marketing of Washington apricots rendering the Order no longer necessary to the industry. The Committee concluded that termination of the Order would have no adverse effect on industry. In preparing to terminate the Order, the Committee recommended a budget of expenditures of \$5,508 for the period beginning April 1, 2021, and ending with the termination.

Following the May 11, 2021, meeting, the Committee conducted a vote among all its members to terminate the Order. Termination of the Order was unanimously supported by the Committee. This final rule indefinitely suspends the handler assessments and any reports being collected, in preparation for the termination of the Order.

### **Final Regulatory Flexibility Analysis**

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), AMS has considered the economic impact of this final rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act are unique in that they are

brought about through group action of essentially small entities acting on their own behalf.

There are approximately 315 growers of Washington apricots and approximately 8 apricot handlers in the production area subject to regulation under the Order. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$30,000,000, and small agricultural producers are defined as those having annual receipts of less than \$1,000,000 (13 CFR 121.201).

Based on USDA's National Agricultural Statistics Service (NASS) data, and given the number of Washington apricot growers, average grower revenue is below \$1,000,000. NASS's 2020 Washington apricot price per ton of \$2,040 yields annual grower estimated revenue of \$3,321,120 which equals approximately \$10,543 average annual receipts per grower (\$2,040 price per ton multiplied by 1,628 tons divided by 315 growers). Thus, most Washington apricot growers would be considered small businesses under the SBA definition.

In addition, according to data from USDA's Market News Service, an estimated Washington apricot 2020 season average Free on Board (f.o.b.) shipper (handler) price per carton was approximately \$31.59 (for Washington apricots, 2-layer tray pack carton, all sizes, June-July 2020, midpoint of the "mostly low" and "mostly high" prices). With a standard Market News weight of 18 pounds per tray pack carton of apricots, the f.o.b. price is approximately \$1.755 per pound, or \$3,510 per ton (\$31.59 divided by 18 pounds). The Committee reported that the industry shipped 1,628 tons for the 2020 season. Total 2020 estimated handler receipts are \$5.714 million (1,628 tons times \$3,510 per ton). Average annual receipts per handler are approximately \$714,000 (\$5.714 million divided by 8 handlers). Thus, most Washington apricot handlers would be considered small businesses under the SBA definition.

This final rule suspends the assessment requirements of the Order and any reports currently being collected. The assessment rate that suspended is the \$2.86 per ton rate in effect for the 2019-2020 fiscal period and continuing to the present day. The Committee also recommended a budget of expenditures of \$5,508 for the period beginning April 1, 2021, and ending with the termination of the Order. The budget was based on the Committee's estimated financial resources on March 31, 2021. Budgeted expenditures include administrative expenses and any expenses necessary to finalize the termination of the Order.

On July 7, 2021, the Committee made the recommendation to suspend the remaining reporting and handler assessments as an adjunct to the recommendation to terminate the Order. As such, the alternative discussed by the Committee was to maintain the status quo and continue to collect handler assessments. The Committee determined that the decrease in the 2020-2021 crop production and the increases in Committee expenses would require the Committee to increase the assessment rate by 365 percent, from \$2.86 to \$13.30 per ton. Further, the 2020-2021 crop production was the smallest crop on record, and evidence suggests that this decline is a continuation of an industry trend.

In addition, the suspension of the handling and packing regulations has not adversely affected the marketing of Washington apricots. Evidence from the past 7 years showed that apricots can be marketed from the production area in the absence of the Order's requirements without a negative economic impact on the industry.

After considering the alternative, the Committee concluded that the cost to maintain the Order outweighed its benefit to producers and handlers and, therefore, unanimously voted to suspend the reporting requirements and collection of assessments beginning with 2021 fiscal period, and to terminate the Order.

This action suspends the reporting and assessment obligations imposed on handlers. When in effect, assessments are applied uniformly on all handlers, and some of those costs may be passed on to producers. The suspension of the reporting and assessment requirements reduces the regulatory burden on handlers and would be expected to reduce the burden on producers.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581-0189 Fruit Crops. This final rule suspends those information collection requirements, and any reporting requirements under the Order.

This final rule does not impose any additional reporting or recordkeeping requirements on either small or large apricot handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, AMS has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

USDA is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

The Committee's meetings were widely publicized throughout the Washington apricot industry, and all interested persons are invited to attend the meetings and participate in Committee deliberations on all issues. Meetings are held virtually or in a hybrid style with participants having a choice whether to attend in person or virtually.

A proposed rule concerning this action was published in the **Federal Register** on November 23, 2021 (86 FR 66462). Copies of the proposal were provided by the Committee to members and handlers. Finally, the proposed rule was made available through the internet by AMS and the Office of the Federal Register. A 60-day comment



period ending January 24, 2022, was provided to allow interested persons to respond to the proposal. During the comment period, one comment was received in response to the proposal. The comment received did not address the merits of this rule. Accordingly, no changes have been made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <https://www.ams.usda.gov/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, AMS finds that this rule will tend to effectuate the declared policy of the Act.

#### **List of Subjects in 7 CFR Part 922**

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Agricultural Marketing Service amends 7 CFR part 922 as follows:

#### **PART 922 – APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON**

1. The authority citation for 7 CFR part 922 continues to read as follows:

**Authority:** 7 U.S.C. 601-674.

#### **§ 922.235 [Stayed]**

2. Section 922.235 is stayed indefinitely.

**Melissa Bailey,**

*Associate Administrator,*

*Agricultural Marketing Service.*

